

ensure they establish effective internal controls regarding compliance with Commission requirements.⁷⁹⁶ DC PSC notes that this is especially important in situations where the state commission may not have oversight authority over the ETC.⁷⁹⁷ An initial audit will aid efficient administration of the program by confirming early on that new ETCs are providing Lifeline service in accord with program requirements.⁷⁹⁸ ETCs will be made aware of any violations of the low-income requirements and prevent them from occurring on an ongoing basis.⁷⁹⁹

289. We direct USAC to audit new carriers (those carriers activating a new Study Area Code to provide Lifeline service for the first time) within the first year they begin receiving federal low-income USF support. This audit requirement shall include ETCs that received their first Study Area Code for the designated service from USAC in 2011.⁸⁰⁰ The audit should occur in the first study area in which the ETC is designated, after it completes its first annual re-certification of its subscriber base. In instances where an ETC is designated in multiple study areas, USAC may, at its discretion, choose which study area in which to perform the audit. This audit will be conducted on an ETC within its first year of seeking Lifeline support within any single state.⁸⁰¹

290. We are not persuaded by the argument that a first-year audit requirement will unreasonably divert resources at companies that have demonstrated a good compliance pattern in their first year.⁸⁰² One commenter proposed that a threshold dollar amount of annual benefits in any state trigger audits rather than an audit subsequent to a carrier's first year of receiving benefits.⁸⁰³ USAC has the discretion, however, to conduct a desk audit, rather than a full-blown audit, of newly established ETCs, including those whose revenues are minimal. Exercising this discretion will minimize potential disruption for smaller ETCs.

291. *Independent Audit Requirements.* We also adopt a requirement that every ETC providing Lifeline services and drawing \$5 million or more in the aggregate on an annual basis, as determined on a holding company basis taking into account all operating companies and affiliates, from the low-income program hire an independent audit firm to assess the ETC's overall compliance with the program's requirements.⁸⁰⁴ Such audits will be performed once every two years unless otherwise directed by the

⁷⁹⁶ A number of commenters support such a requirement. See CenturyLink Comments at 12; see also DC PSC Comments at 3-4; FL PSC Comments at 14-15; MI PSC Comments at 5; MO PSC Comments at 9-10; YourTel Comments at 8. We note that USAC retains the right to conduct targeted audits of any ETC in response to suspicious data, whistleblower activity, inquiries from state commissions, and for other reasons as permitted by law.

⁷⁹⁷ See DC PSC Comments at 3-4.

⁷⁹⁸ See CenturyLink Comments at 12; see also NASUCA Reply Comments at 11.

⁷⁹⁹ See FL PSC Comments at 14.

⁸⁰⁰ If an ETC was providing wireline Lifeline service prior to 2011 but received its first study area code for wireless service in 2011, it is subject to this requirement.

⁸⁰¹ Annually, ETCs providing low-income service must submit the FCC Form 497 and Eligibility Verification Survey. See USAC, Step 6: Submit Lifeline and Link Up Worksheet (Form 497), <http://www.usac.org/li/telecom/step06/form497.aspx> (last visited Feb. 2, 2012); USAC, Step 8: Annual Verification of Consumer Eligibility, <http://www.usac.org/li/telecom/step08/verification-of-eligibility.aspx> (last visited Feb. 2, 2012).

⁸⁰² See Consumer Cellular Comments at 16; see also NALA/PCA Comments at 5.

⁸⁰³ See Consumer Cellular Comments at 16.

⁸⁰⁴ Under our risk-based approach, we selected \$5 million as our threshold so as to subject those carriers that collectively draw the vast majority (over 90 percent) of Lifeline funding to the new requirement, while not imposing (continued....)

Commission, as discussed below.⁸⁰⁵ The independent audit firms conducting the audits must be licensed certified public accounting firms. These audits shall be conducted consistent with the GAGAS standards and follow the audit guidelines described below.⁸⁰⁶

292. The Commission directs USAC to prepare proposed audit guidelines outlining the scope of the engagement and the extent of compliance testing to be performed in the independent audits and submit them to the Bureau and OMD within 60 days of the release of this Order. The Bureau, in conjunction with OMD, will review the proposal and finalize a uniform and standard audit plan and publish it in a Public Notice, which also will establish a deadline for completing the first biennial audit. Rather than performing an audit at the individual study area level, we expect these audits to focus on the company's overall compliance program and internal controls regarding Commission requirements as implemented on a nationwide basis. For instance, when an ETC has an automated system to verify initial and ongoing eligibility, the biennial independent audit should focus on whether the methods and procedures of such automated systems are appropriately structured to ensure compliance with program rules. Independent audits shall be an agreed upon procedures attestation.

293. We expect that the uniform audit plan established by the Bureau and OMD, working in conjunction with USAC, will provide clarity for both auditors and the companies subject to this requirement. As discussed above, the Bureau and OMD will work with USAC to identify the key risk areas and specific audit program requirements that independent auditors must audit for compliance. In other words, independent audit firms will not need to guess at the areas of greatest concern to the Commission, but rather will be given structured aspects of ETC program compliance to verify. The Bureau and OMD will set out standards for ETCs that are engaging auditors to perform an agreed upon procedures attestations. If an auditor subsequently identifies an area of ambiguity regarding Commission requirements, one that will likely affect multiple ETCs, the issue should be reported to USAC, and the audit firm shall submit to the Commission any requests for rule interpretations necessary to complete the audit. For areas where it appears Commission requirements may be unclear, USAC will notify all outside auditors so that it will not be held as a negative finding until guidance has been provided by the OMD or the Bureau.

294. Within 60 days after completion of the audit work, but prior to finalization of the report, the third party auditor shall submit a draft of the audit report to the Commission and USAC. In order to maximize the administrative efficiency and benefit of these audits, we mandate that covered ETCs provide audit reports to the Commission, USAC, and relevant state and Tribal governments within 30 days of issuance of the final report, and that the Commission and USAC be deemed authorized users of such reports, as proposed in the *NPRM*.⁸⁰⁷ These audit reports will not be considered confidential and requests to render them so will be denied.

295. We determine that due to the significant growth of the program; the known instances of waste, fraud, and abuse; and the critical importance of ensuring this program effectively serves those most

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additional compliance costs on carriers who collectively draw less than 10 percent of annual funding, many of whom are smaller providers.

⁸⁰⁵ An affiliate shall be determined in accordance with section 3(2) of the Communications Act, as amended.

⁸⁰⁶ See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GOVERNMENT AUDITING STANDARDS (Aug. 2011), available at <http://www.gao.gov/govaud/iv2011gagas.pdf>. In particular, these audit program standards shall reflect the GAGAS standards for auditor independence, auditor professional judgment, auditor competence, auditor quality control and assurance, standards for attestation engagements, reporting audit field work standards, and reporting standards.

⁸⁰⁷ See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2803, para. 102.

in need, these remedial steps are warranted and necessary at this time.⁸⁰⁸ We do not agree with commenters that contend an annual audit requirement is unnecessary absent evidence of abuse.⁸⁰⁹ The Commission has long recognized that regular audits of a company's compliance when the company receives federal funds or is a federally regulated entity are part of the cost of doing business.⁸¹⁰ We conclude it is appropriate to focus the mandatory audit requirement on the largest recipients, who pose the biggest risk to the program if they lack effective internal controls to ensure compliance with Commission requirements.⁸¹¹ These larger ETCs have greater resources to devote to compliance-related activities and should be prepared to devote such resources as part of the necessary cost of obtaining significant federal benefits. Performing a baseline audit of the carriers drawing \$5 million from the fund annually, which collectively draw more than 90 percent of Lifeline support, is warranted to develop an understanding of the areas of biggest risk once the new rules have been implemented. If there are no material findings in a carrier's first independent audit report, the Wireline Competition Bureau may, in its discretion, relieve the carrier of its obligation to perform an independent audit in the next biennial audit cycle. Nor do we agree with commenters who contend that any new audit requirement should replace existing USAC oversight activities.⁸¹² The new biennial audit requirement that we adopt today is focused on the corporate-wide compliance program, rather than carrier activity in a particular study area.

296. In order to implement this new biennial audit rule, we will need to determine at the holding company level which carriers meet the \$5 million threshold. We therefore adopt a rule requiring all Lifeline ETCs to report annually the names of the company's holding company, operating companies and affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation).⁸¹³ Additionally, filers will be required to report relevant universal service identifiers for each such entity by Study Area Code. This reporting will help the Commission increase accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient, regardless of corporate structure. Overall, we conclude that this annual reporting requirement should not impose an undue burden on ETCs, and the benefits of USAC and the Commission

⁸⁰⁸ *Id.* at 2900, Separate Statement of Chairman Genachowski.

⁸⁰⁹ See NTCA Comments at 5; see also TSTCI Reply Comments at 4.

⁸¹⁰ See, e.g., *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates*, CC Dkt. No. 86-111, Report and Order, 2 FCC Rcd 1298, 1329-31, paras. 243-59 (1987) (*Joint Cost Order*), petition for review denied, *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14190-92, paras. 336-38, 341 (2000) (*Bell Atlantic/GTE Merger Order*), vacated in part sub nom., *Ass'n of Communications Entrs. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001); *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14190, para. 336.

⁸¹¹ Commenters raised various concerns about a mandatory audit requirement, such as the potential cost to companies, and the potential for burden on small businesses. See, e.g., CenturyLink Comments at 12; Consumer Cellular Comments at 16; MITS Reply Comments at 5; MI PSC Comments at 5; NTCA Comments at 5; TSTCI Reply Comments at 4. MITS and NTCA note, for instance, that requiring ETCs to engage independent firms for routine compliance audits would have the effect of imposing greater economic and fiscal impacts on small companies than on larger providers with increased numbers of staff and greater resources.

⁸¹² See AT&T Jan. 24 *ex parte* Letter Attach., at 4.

⁸¹³ Section 153 of the Act defines "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." 47 U.S.C. § 153(2); see also 47 C.F.R. § 76.1200.

being able to determine who is subject to this new audit requirement outweigh any burdens. Such information is necessary in order for the Commission to ensure compliance with the requirements adopted today that take into account holding company structure. We delegate authority to the Wireline Competition Bureau to announce the initial deadline for this annual reporting requirement after Federal Register publication of OMB approval under the Paperwork Reduction Act. The Bureau also will issue a Public Notice identifying the carriers that meet the \$5 million threshold.

297. We acknowledge that compliance with the rules we adopt here will involve some administrative costs for ETCs; however, we conclude that those costs are outweighed by the significant benefits gained by protecting the Fund from waste, fraud, and abuse.⁸¹⁴ We estimate that up to 15 percent of current Lifeline subscribers may be ineligible for the program, potentially representing hundreds of millions of dollars in wasted support per year. We expect that a rule requiring regular and mandatory audits of ETCs will ensure that the companies have put in place adequate procedures to prevent such waste and prevent unbridled future growth in the Fund.⁸¹⁵ The resulting cost savings will in turn benefit through cost savings those consumers and companies who contribute to the Universal Service Fund.

298. *Consequences of Non-Compliance.* The Commission's rules already direct USAC to "suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets, or support amounts... upon reasonable request, or if directed by the Commission to do so."⁸¹⁶ We now address the specific procedural steps that will be taken when USAC determines an ETC has failed to comply with our low income rules. Going forward, when USAC finds that an ETC has failed to provide adequate documentation or has otherwise been operating in violation of the Commission's low income rules and requirements, it shall notify the ETC of that failure and give the ETC 30 days to provide the necessary documentation and come into compliance. The ETC must provide USAC with proof of that compliance as well as a description of the specific measures the ETC will take to avoid repetition of the violation. USAC has the discretion to suspend further payments to the carrier pending USAC's receipt and evaluation of the carrier's response to this notification. USAC, however, shall suspend only payments related to the Study Area Codes where the ETC is operating in violation of the Commission's low income rules and requirements.

299. Carrier compliance with the Commission's low-income USF rules and requirements is critical to maintaining the integrity of the fund. Protecting the fund against waste, fraud and abuse helps further Congress's objectives in section 254(b) of the Act, including providing low income consumers with access to affordable telecommunications and information services.⁸¹⁷ We intend to pursue recapture of any funds that ETCs obtain in violation of our rules pursuant to applicable statutes and regulations including, but not limited to, the Improper Payments Elimination and Recovery Act (IPERA) and related Office of Management and Budget implementation guidelines.⁸¹⁸ A carrier that violates the

⁸¹⁴ Immediate adoption of a rule requiring documentation of program-based eligibility will enable the Commission to realize cost savings in the near term, which can in turn be used to, among other things, fund efforts to modernize the Lifeline program.

⁸¹⁵ See *supra* para. 102 (noting that up to an estimated 15 percent of Lifeline subscribers could be ineligible).

⁸¹⁶ 47 C.F.R. § 54.707.

⁸¹⁷ See 47 U.S.C. § 254(b); see also *FCC Enforcement Advisory: Eligible Telecommunications Carriers Offering Lifeline Service Are Reminded of Their Obligation to Confirm Consumers' Eligibility and to Avoid Providing Duplicative Service*, Enforcement Advisory, DA 11-1971 (Enforc. Bur. Dec. 5, 2011) (*Lifeline Enforcement Advisory*).

⁸¹⁸ See Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, 124 Stat. 2224; see also Memorandum For the Heads of Executive Departments and Agencies (March 22, 2010), available at http://www.whitehouse.gov/sites/default/files/omb/assets/a123/a123_appx-c.pdf; Memorandum For the Heads of (continued....)

Commission's low-income rules also faces stiff penalties, including monetary forfeitures of up to \$150,000 for each violation or each day of a continuing violation, up to a maximum of \$1,500,000 per continuing violation.⁸¹⁹ In particularly egregious cases, a carrier also could face revocation of its section 214 authorization to operate as a carrier.⁸²⁰ Finally, ETCs are subject to revocation of their ETC designation, by either the relevant state commission or this Commission, for failure to comply with program requirements.

VIII. PAYMENT OF LOW-INCOME SUPPORT

300. The Commission's Office of the Managing Director directed USAC on May 13, 2011 to propose an administrative process for disbursing low-income support to eligible telecommunications carriers based on actual claims, as opposed to projected claims.⁸²¹ On August 9, 2011, USAC submitted its plan to transition universal service low-income support from payments based on projections of subscriber counts to payments based on actual subscriber counts.⁸²² The Bureau sought comment on USAC's plan, including the filing deadline for carriers to submit their FCC Form 497, whether carriers should be allowed to continue to file the FCC Form 497 on a quarterly basis, the deadline for revisions on the FCC Form 497, and on various questions related to the transition to the new disbursement process.⁸²³

301. USAC's plan proposes to establish a monthly due date by which an ETC must submit its FCC Form 497 in order to receive a payment at the end of the following month.⁸²⁴ In order to transition to paying on actual support claims, USAC proposes to true-up the amount of support already paid to each ETC based on projected support against the ETC's support claim for a specific month when the transition takes place.⁸²⁵ In the case of a carrier that would owe money back to the Fund as a result of the true-up process that takes place during the transition month, USAC suggests subtracting the overpayment from

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Executive Departments and Agencies (April 14, 2011), available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-16.pdf>.

⁸¹⁹ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2). We note that these penalties are periodically adjusted for inflation.

⁸²⁰ See 47 U.S.C. § 214; 47 C.F.R. § 63.01(a) (granting domestic section 214 authority generally); *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 11364, 11373-74, paras. 15-16 (1999) (stating that a carrier's blanket section 214 authority can be revoked "when warranted in the relatively rare instances in which carriers may abuse their market power or their common carrier obligations").

⁸²¹ See Letter to Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company, from Dana Shaffer, Deputy Managing Director, Federal Communications Commission (dated May 13, 2011), 26 FCC Rcd 6810 (*FCC May 2011 Letter*).

⁸²² The Bureau sought comment in a Public Notice on USAC's plan to replace the current process of USAC projecting low-income support with a process whereby ETCs are reimbursed based on actual claims. See *Lifeline Disbursement Public Notice*.

⁸²³ See *id.* at 13132-33.

⁸²⁴ See *id.* at 13132. USAC's plan proposes that carriers that do not file an FCC Form 497 by the monthly deadline would not receive a payment in the following month, but would receive a disbursement based on that support claim in the subsequent month. See *id.* at 13132.

⁸²⁵ See *id.* at 13139, Appendix A. The effect of this process would be that carriers currently paid based on projections would likely receive little or no support for one month as a result of the true-up. USAC's plan allows an alternative for carriers to begin the transition to payment on actual claims earlier than the transition month by notifying USAC to begin transitioning specific study area codes sooner so that the carrier mitigates the risk of experiencing a month with little or no payment. See *id.* at 13141, Appendix A.

the carrier's next low-income disbursement, and in the event the negative amount exceeds the carrier's next monthly payment, USAC plans to invoice the carrier for the full amount of the negative balance beginning the second month after the transition month.⁸²⁶ USAC further proposes to adopt a rolling six-month window, calculated from the current disbursement month, during which ETCs can file an original or a revised FCC Form 497.⁸²⁷ Carriers would have until the yearly December filing deadline to file original or upward revisions for the preceding June, but downward revisions would be accepted at any time.⁸²⁸ USAC's plan for transition to payment on actual support claimed would still allow carriers to file on a monthly or quarterly basis, but carriers filing quarterly would receive a three-month lump payment, not a monthly payment. The majority of commenters support USAC's plan to transition payment to actual support, noting the plan would curb waste, fraud and abuse in the low-income program.⁸²⁹

302. *Discussion.* With a few modifications noted below, we adopt USAC's plan to shift the low-income disbursement process from payments based on projected subscriber counts to payments based on actual subscriber counts. We direct USAC to implement the transition beginning on July 1, 2012 with completion by October 2012. We also implement administrative measures to accelerate the reporting and disbursement process and establish a new disbursement system to promote efficiency in the methods and timeliness of low-income support payments and decrease the burden on carriers who are transitioning from projected payments to actual payments.⁸³⁰

303. We first adopt USAC's proposal to establish a monthly deadline for carriers to file the FCC Form 497.⁸³¹ Beginning July 1, 2012, ETCs seeking support for low-income service provided in the preceding month shall submit to USAC no later than the eighth day of each month an electronic FCC Form 497 reporting their support claims, as well as certifications of accurate reporting, in order to receive a low-income disbursement at the end of that same month.⁸³² ETCs that do not file their FCC Form 497 electronically by the eighth day of the month may still file the FCC Form 497, electronically or manually, within the time period we establish below, however those carriers may not receive their low-income support disbursement at the end of the same month.⁸³³ ETCs are currently required to file an FCC Form

⁸²⁶ See *Lifeline Disbursement Public Notice* 26 FCC Rcd at 13140, Appendix A.

⁸²⁷ See *id.* at 13141, Appendix A.

⁸²⁸ See *id.*

⁸²⁹ CenturyLink Disbursement Comments at 1; COMPTel Disbursement Comments at 1-2; MI PSC Disbursement Comments at 3; PR Wireless Disbursement Comments at 2; Smith Bagley Disbursement Comments at 2; South Carolina Office of Regulatory Staff Disbursement Comments at 3; USTelecom Disbursement Comments at 2; Verizon and Verizon Wireless Disbursement Reply Comments at 2; MA DTC Disbursement Reply Comments.

⁸³⁰ See, e.g., COMPTel Disbursement Comments at 2; MI PSC Disbursement Comments at 3; South Carolina Office of Regulatory Staff Disbursement Comments at 2; USTelecom Disbursement Comments at 1; MA DTC Disbursement Reply Comments at 3.

⁸³¹ Most commenters support USAC's proposal to establish a filing deadline for the FCC Form 497, and state that a filing deadline should enable USAC to make disbursements in a timely and predictable manner. See, e.g., CenturyLink Disbursement Comments at 1; Verizon and Verizon Wireless Disbursement Comments at 2; Smith Bagley Disbursement Comments at 6; PR Wireless Disbursement Comments at 6; COMPTel Disbursement Comments at 3-4; USTelecom Disbursement Comments at 3; NTTA Disbursement Comments at 2.

⁸³² In months on which the 8th falls on a weekend or holiday, carriers must submit the FCC Form 497 by the next business day after the 8th day.

⁸³³ For example, an ETC that files its September support claims in an FCC Form 497 manually on October 8th may not receive its low-income support disbursement until November 30th, whereas an ETC that files its September support claims in an electronically filed FCC Form 497 on October 8th would receive its low-income support disbursement on October 31st. An ETC that files an electronic FCC Form 497 for September support claims on (continued....)

497 by the fifteenth day of each month reporting low-income service provided in the preceding month. We find that requiring ETCs to electronically file an FCC Form 497 within eight days of the end of the preceding month, rather than fifteen days, is a necessary modification to the current administration of this program given one of our goals to expedite support payments to ETCs.⁸³⁴

304. Beginning October 2012, we direct USAC to process each electronically filed FCC Form 497 and disburse support to ETCs that file electronically by the last business day of the same month in which the FCC Form 497 is due, provided it is timely filed. As we require ETCs to submit FCC Forms 497 earlier in the month, we also decrease substantially the amount of time between the filing of an FCC Form 497 and USAC's disbursement so that carriers will receive actual support within one month of providing service to eligible low-income consumers so long as they timely file an electronic FCC Form 497.⁸³⁵ This new timetable will provide USAC sufficient time to process the claims. Finally, some ETCs submit claims for reimbursement on a quarterly, rather than a monthly basis. We find no reason to disallow carriers from filing their FCC Form 497 on a quarterly basis; however carriers choosing to file quarterly will no longer receive monthly support payments, but rather will receive one quarterly payment for all three months.⁸³⁶

305. We next modify the amount of time ETCs have to file FCC Forms 497 and any revisions thereto. Currently, USAC maintains an administrative window of fifteen months for filing original or revised support claims.⁸³⁷ After the end of each calendar year, carriers have fifteen months to file original claims or to revise support claims for any request due during the closed calendar year.⁸³⁸ After the fifteen month window, ETCs may not file revised or original support claims for any portion of the closed calendar year.⁸³⁹ USAC proposes that new support claims and upward revisions would only be permitted to be filed within six months of the current disbursement month, while downward revisions may be filed at any time.⁸⁴⁰ We adopt USAC's proposal of a rolling window, but decline to adopt the six-month window proposed by USAC because it does not allow sufficient time for carriers to process revisions and may promote inaccuracies in payments. We find instead that a rolling one-year deadline is sufficient time for ETCs to reconcile their records and submit original or revised FCC Form 497s to USAC.⁸⁴¹ ETCs

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October 10th may not receive its low-income support disbursement until November 30th, whereas an ETC that electronically files its September support claims in an FCC Form 497 on October 8th would receive its low-income support disbursement on October 31st.

⁸³⁴ Commenters expressed concern at the amount of time it takes for USAC to disburse low-income funds. *See, e.g.,* COMPTTEL Disbursement Comments at 2-7; Smith Bagley Disbursement Comments at 5-6; PR Wireless Disbursement Comments at 5-6; Nexus Disbursement Reply Comments at 2. This modification will substantially reduce the time it takes for USAC to disburse low-income funds to the ETCs that file electronically.

⁸³⁵ Carriers that do not file their FCC Form 497 electronically may experience a delay in payment and receive their disbursement by the end of the following month.

⁸³⁶ *See Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13132-33.

⁸³⁷ *See id.* at 13133.

⁸³⁸ *See id.*

⁸³⁹ *See id.*

⁸⁴⁰ *See id.*

⁸⁴¹ Many commenters oppose USAC's proposal to have an asymmetrical revision window, and suggest that a six month window for upward revisions is too short a period for carriers to reconcile their records and submit revisions. *See, e.g.,* Alexicon Disbursement Comments at 5; CenturyLink Disbursement Comments at 1-2; COMPTTEL (continued....)

therefore must file within one year from the due date of the relevant FCC Form 497 an original FCC Form 497 or any revisions to the FCC Form 497 due on that date. ETCs that file an FCC Form 497 after the relevant due date, but within the one-year rolling deadline, shall receive reimbursement in the following month. USAC, however, shall not accept any requests for reimbursement submitted more than one year from the due date of the relevant FCC Form 497. This twelve-month period to file an original FCC Form 497 or any revision should be sufficient time for carriers to ensure their request for support contains accurate and complete subscriber data and all other information supporting their claim.⁸⁴²

306. Finally, USAC's plan for the transition to actual claims would reduce an ETC's actual support claim during the transition month by the already paid projected amount from prior months. USAC also proposes not to pay a new projected amount during this transition month.⁸⁴³ In many cases, this method would provide ETCs with little or no support for the transition month. We acknowledge that this transition could inflict a financial hardship on many carriers for the transition month.⁸⁴⁴ USAC's plan for the transition allows carriers to notify USAC to begin transitioning specific study area codes before the transition month so that the carriers may reduce the potential financial hardship of having all study area codes transition in one month.⁸⁴⁵ We therefore adopt a modified version of USAC's alternative approach whereby the transition to payments based on actual claims for ETCs receiving support based on projections as of the date of this Order will take place over a three-month period.⁸⁴⁶ During this transition period, carriers may notify USAC which study area codes to transition from projected to actual claims during each month. This method allows carriers to offset the financial impact of the transition by permitting the carrier to designate the study area codes USAC will transition in a given month. For example, a carrier with twenty study area codes may chose to transition five study area codes in the first month, while receiving support consistent with the current system based on projections for the remaining fifteen study area codes in that same month. In subsequent months, the carrier could choose to transition other study area codes and would receive disbursement based on actual claims for those study area codes, while receiving payment on projections for the remaining undesignated study area codes. Carriers could continue to designate the study area codes to transition until the third month when USAC would complete the transition and disburse payment for all study area codes based on actual claims.

307. The approach we adopt not only reduces the financial impact on the carriers by extending the transition period to three months, but it also minimizes the likelihood of the carrier owing money to the Fund at the end of the transition by completing the transition in the same month as USAC begins its accelerated payment. Because we set the new FCC Form 497 due date to the eighth day of the month and direct USAC to pay disbursements based on the actual claims in the electronically filed FCC Form 497 by

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Disbursement Comments at 8; PR Wireless Disbursement Comments at 6-8; Smith Bagley Disbursement Comments at 6-8; USTelecom Disbursement Comments at 2-3; NTTA Disbursement Comments at 3-4; Nexus Disbursement Reply Comments at 4.

⁸⁴² We decline to establish a different limitation period for downward adjustments, but note that the Commission or USAC may conduct an audit of a carriers' subscriber data and recoup any excess funds disbursed to the carrier at any time.

⁸⁴³ See *Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13139, Appendix A.

⁸⁴⁴ See, e.g., Alexicon Disbursement Comments at 3-4; COMPTTEL Disbursement Comments at 2; Smith Bagley Disbursement Comments at 2-6; PR Wireless Disbursement Comments at 2-6; Sprint Disbursement Comments at 1-2; NTTA Disbursement Comments at 2-3; PR Wireless Disbursement Comments at 2-6.

⁸⁴⁵ See *Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13141, Appendix A.

⁸⁴⁶ See NTTA Disbursement Comments at 3 (explaining that a transition to actual costs over multiple months would ease the transition for USAC as well as for ETCs).

the last business day of the same month the FCC Form 497 is due, a carrier will receive payments based on actual claims submitted in the same month that the FCC Form 497 is due. Therefore, in the first month of the accelerated payment schedule, which is also the last month in which we complete the transition to payment on actual claims, a carrier that has filed an FCC Form 497 by the last business day of the previous month, as well as an electronic FCC Form 497 by the eighth day of the current month, would receive a low-income disbursement for the previous month's FCC Form 497 as well as the current month's electronic FCC Form 497 at the end of the current month, thus receiving payment for two months' of support at the end of that month. For example, if a carrier files an FCC Form 497 in September, under the current system it would be paid in October. When the transition month occurs in October, the carrier would file its electronic FCC Form 497 on the eighth day of October, and receive its September disbursement as well as its October disbursement on the last business day of October. Any true-up of disbursements would take place in this "double payment" month and will minimize carriers experiencing a negative disbursement as a result of this transition period.

308. Carriers may choose to begin their transition to payment on actual claims at any time after the effective date of these rules. Carriers must notify USAC, however, of which study area codes to transition during each month no later than June 1, 2012, and the transition to payments based on actual claims must be completed by October 2012. In the event a carrier fails to notify USAC of which study area codes to transition each month, we direct USAC to select which study area codes to transition for such carrier.⁸⁴⁷ USAC will use its best efforts to choose study area codes proportionately to that carrier's monthly disbursements so that the risk of the carrier experiencing the entire transition for all its study area codes in a one-month period is minimized. Carriers that service only one study area code will have until October 2012 to plan and prepare for their transition to actual claims. This transition method should minimize the burden on carriers and avoid the hardship of carriers missing a month of payments under the USAC proposal. Any study area codes that are submitted to USAC for low-income support for the first time on or after the date of this Order will be paid based on actual claims.⁸⁴⁸

309. In the event a carrier owes money to the Fund as a result of the transition process, USAC proposes to offset any negative balance in the next month and, if the carrier continues to owe the Fund money in subsequent months, to invoice the carrier for any remaining balance thereafter.⁸⁴⁹ We adopt USAC's plan to net any negative balance a carrier may incur as a result of this process against the carrier's next monthly payment and invoice the carrier for the remaining balance thereafter. While many carriers suggest that USAC net any remaining balance against future monthly payments until the negative balance is paid off, we find that the transition method we adopt today allowing carriers to stagger the transition by study area code will minimize the financial burden on the carrier and reduce the likelihood of any carrier having substantial negative balance.

IX. MODERNIZING THE PROGRAM

A. Bundled Services

310. *Background.* Today, consumers are increasingly purchasing services in bundles that include both voice and broadband services.⁸⁵⁰ Bundled plans allow consumers to customize packages of

⁸⁴⁷ Carriers that fail to notify USAC of which study area codes to transition each month by June 1, 2012 may experience a delay in payment for the first transition month.

⁸⁴⁸ Any ETCs that USAC currently pays based on actual claims must continue to be paid based on actual claims.

⁸⁴⁹ *Lifeline Disbursement Public Notice*, 26 FCC Rcd at 13133.

⁸⁵⁰ See, e.g., NATIONAL BROADBAND PLAN at 38, n.20 (noting that "no definitive data source tracks whether consumers purchase broadband as a standalone product or as a bundle, but estimates of the share of subscribers with some type of bundle range from 65 percent . . . to 90 percent"); OECD, *Broadband Bundling: Trends and Policy* (continued...)

services to meet their communications needs,⁸⁵¹ and also offer potential cost-savings as compared to standalone products.⁸⁵² Eligible low-income consumers also can benefit from the opportunity to obtain packages that contain both mobile voice and broadband services at a reduced cost.

311. The Commission's rules currently provide for Lifeline discounts on basic voice service, but do not address whether such discounts may be applied to bundled offerings that include both basic voice service and other services, such as broadband. Specifically, section 54.401 of the Commission's rules provide that Lifeline supported services consist of a "retail local service offering" with specified functionalities.⁸⁵³ The rule is silent, however, on whether the consumer may apply his or her Lifeline discount to reduce the cost of calling plans that include additional service components in addition to basic, local calling.

312. Section 54.403(b) of the Commission's current rules sets out how Lifeline support must be passed through to the consumer.⁸⁵⁴ As noted above,⁸⁵⁵ pursuant to that rule, ETCs that charge federal subscriber line charges or equivalent federal charges to the subscriber apply Tier 1 federal Lifeline support to waive the federal SLC for Lifeline subscribers.⁸⁵⁶ Any additional support received (*i.e.*, from Tiers 2 through 4) is then applied to reduce the consumer's intrastate rate.⁸⁵⁷ ETCs that do not charge federal SLCs or equivalent federal charges must "apply the Tier [1] federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate" for the services they provide.⁸⁵⁸ Our rules, however, do not define the parameters of a lowest-cost plan or specify the types of service plans that are eligible for Lifeline support.

313. Some states have enacted their own policies regarding use of Lifeline support to reduce the cost of expanded voice offerings that include optional features or bundled combinations of other services.⁸⁵⁹ Among these states, however, there is no uniform approach.⁸⁶⁰ In an October 2010 report, the

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Implications, OECD Digital Economy Papers No. 175, at 3, http://www.oecd-ilibrary.org/science-and-technology/broadband-bundling_5kghtc8znnbx-en (stating that its "data collection of over 2,000 offers of stand-alone and bundled services from 90 firms across 30 OECD countries reveals that broadband services in the OECD are overwhelmingly sold as mixed bundles, allowing users to choose among stand-alone offers or bundled services") (*OECD Bundling Study*).

⁸⁵¹ See *OECD Bundling Study* at 5 ("Typical bundles offer fixed-voice, data, and video services and are commonly referred to as 'multiple-play' or 'triple-play' packages. A number of operators are expanding their bundles to include mobile voice as a fourth component of 'quadruple-play' offers.").

⁸⁵² As the Commission noted in the *NPRM*, as compared to carriers' basic plans, bundled packages of services may offer better value for Lifeline consumers. See *Broadband Adoption and Use in America* (finding that consumers who receive broadband bundled with other services pay an average of \$8.55 less per month than those customers who purchase stand-alone broadband service), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf; see also *OECD Bundling Study* at 3 (noting that the average bundled discount compared with buying the services separately is \$15 per month or a 26 percent discount).

⁸⁵³ 47 C.F.R. § 54.401(a).

⁸⁵⁴ See 47 C.F.R. § 54.403(b).

⁸⁵⁵ See *supra* section V (Support Amounts for Voice Service).

⁸⁵⁶ 47 C.F.R. § 54.403(b).

⁸⁵⁷ *Id.*

⁸⁵⁸ *Id.*

⁸⁵⁹ See, e.g., Letter from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. Nos. 11-42 *et al.*, (continued....)

GAO found that ETCs in 14 states do not currently permit consumers to apply the Lifeline discount to a bundled service offering or package that includes telephone service.⁸⁶¹ The National Broadband Plan recommended that the Commission and states permit Lifeline consumers to apply their Lifeline discounts on all calling plans with a local voice component, including bundled service packages, as it would help make bundled offerings, including those that include broadband, more affordable for low-income households.⁸⁶²

314. In the *Lifeline and Link Up NPRM*, the Commission first sought comment on amending the Commission's rules to adopt a uniform federal requirement that Lifeline discounts may be used on any Lifeline calling plan offered by an ETC with a voice component, including bundled service packaging combining voice and broadband, or packages containing optional calling features.⁸⁶³ Pursuant to this proposed rule, states would not be permitted to adopt rules prohibiting ETCs from offering bundled service packages or packages with optional calling features to Lifeline consumers.⁸⁶⁴ Second, the Commission also sought comment on whether to adopt a national rule that would require all ETCs to offer Lifeline discounts on all of their service plans with a voice component.⁸⁶⁵ Third, the Commission sought comment on whether to cap the Lifeline discount for each eligible subscriber receiving a bundled service package or package with optional calling features at the amount the subscriber would have received if he or she had selected a basic voice plan.⁸⁶⁶

315. *Discussion.* We amend sections 54.401 and 54.403 of the Commission's rules to adopt a rule permitting ETCs in all states to allow qualifying low-income consumers to apply Lifeline discounts to all residential service plans that provide voice telephony service, including bundled service packages combining voice and broadband, or packages containing optional calling features.⁸⁶⁷ We adopt a flexible federal policy that allows all ETCs (whether designated by a state or this Commission) to choose to make bundled service packages or packages containing optional calling features available to Lifeline

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(filed Aug. 17, 2011) (noting that 24 states permit ETCs to offer bundled service packages or voice plans with additional services to Lifeline consumers, 5 require that ETCs offer bundled service packages or voice plans with additional services to Lifeline consumers, and one state is currently looking into the issue) (NARUC Aug. 17 *ex parte* Letter).

⁸⁶⁰ See *id.*

⁸⁶¹ 2010 GAO REPORT at 13; see also NATIONAL REGULATORY RESEARCH INSTITUTE (NRRI), STATE UNIVERSAL SERVICE FUNDING MECHANISMS: RESULTS OF NRRI'S 2005-2006 SURVEY 49, Table 30 (2006) (listing the services supported by various state universal service low-income programs), available at <http://nrri.org/pubs/telecommunications/06-09.pdf>.

⁸⁶² See NATIONAL BROADBAND PLAN at 172 (Recommendation 9.1).

⁸⁶³ See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2850, para. 258.

⁸⁶⁴ *Id.* (citing 47 U.S.C. § 254(f) (barring states from adopting regulations that are inconsistent with the rules established by the Commission to preserve and advance universal service)).

⁸⁶⁵ *Id.* at 2850, para. 259.

⁸⁶⁶ *Id.*

⁸⁶⁷ Several commenters support this proposal. See, e.g., AT&T Comments at 7; AT&T PN Reply Comments at 12; Box Top Comments at 3; CT DPUC Comments at 4; GCI Comments at 52; LCCHR Reply Comments at 3; MA DTC Comments at 11; MI PSC Comments at 11; NASUCA Comments at 29-30; NCTA Comments at 4; NJ DRC Comments at 24; New America Foundation Comments at 5-6; NAF PN Reply Comments at 4-5; NJ DRC Comments at 24; NY PSC Comments at 6; TCA Comments at 4.

consumers.⁸⁶⁸ We clarify that, pursuant to the rule we adopt today, ETCs may permit consumers to apply their Lifeline discount to family shared calling plans. The plan must be in the name of an eligible low-income consumer, and a household may receive only one Lifeline-supported service. Moreover, pursuant to this rule, each subscriber's Lifeline discount can be no larger than if he or she chose a basic voice plan.⁸⁶⁹ Finally, as described below, we adopt an additional rule to protect the interests of Lifeline subscribers who purchase bundled service packages.

316. We also eliminate language in section 54.401 of our rules that currently describes Lifeline as a retail service offering "that is available only to low-income consumers."⁸⁷⁰ We eliminate such language to clarify that ETCs are free to apply the Lifeline discount to any retail service offering, not just to an offering specifically offered to low-income consumers.

317. Adoption of these requirements is consistent with the statutory principle that consumers have access to quality services at "just, reasonable, and affordable rates."⁸⁷¹ As the Commission noted in the *Lifeline and Link Up NPRM*, many carriers limit Lifeline offerings to basic voice service, even in states where ETCs are not precluded by state requirements from allowing consumers to apply their Lifeline discounts to the purchase of bundled packages or optional voice services.⁸⁷² A nationwide rule giving ETCs the flexibility to offer expanded service packages to Lifeline consumers will enhance consumer choice by making broadband and mobile voice services more accessible and affordable for all eligible low-income consumers.⁸⁷³ Indeed, competition in the Lifeline services market may provide additional incentives for ETCs to offer an expanded range of service plans with additional calling features to eligible low-income consumers, including bundled service packages.

318. Our findings today are compatible with the determinations made by the Commission in the April 2004 *Lifeline and Link Up Order and Further Notice of Proposed Rulemaking*, which expressly declined to adopt a rule prohibiting Lifeline consumers from purchasing optional calling features, such as caller ID or call waiting.⁸⁷⁴ In that case, the Commission stated that such a restriction might discourage qualified low-income consumers from enrolling in the Lifeline programs.⁸⁷⁵ Such a rationale is analogous

⁸⁶⁸ Thus, if an ETC chooses to make expanded calling plans available to Lifeline consumers, states may not adopt policies that prohibit consumers from applying their Lifeline discounts to the voice calling plan of their choice. See 47 U.S.C. § 254(f). We clarify that, pursuant to the rule we adopt today, ETCs may permit consumers to apply their Lifeline discount to family shared calling plans. The plan must be in the name of an eligible low-income consumer and a household may receive only one Lifeline-supported service. See Appendix A, 47 C.F.R. §§ 54.408, 54.409 (adopted rules). Consumers who are eligible to receive Tribal Link Up support, see *supra* section VI.D (Tribal Lifeline Eligibility), may also apply those discounts to the cost of bundled service packages or packages containing optional calling features.

⁸⁶⁹ For example, if a Lifeline subscriber would have received \$9.25 per month in support to purchase a voice-only service, he or she would continue to receive no more than \$9.25 per month, or \$111 per year, in Lifeline support to apply toward the purchase of a bundled service package or a voice package containing optional calling features.

⁸⁷⁰ 47 C.F.R. § 54.401(a); see also *supra* section IV (Voice Services Eligible for Discounts).

⁸⁷¹ 47 U.S.C. § 254(b)(1).

⁸⁷² *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2850, para. 259; see USAC, Low Income, Telephone Assistance Program for Low Income Households, LifelineSupport.org, www.lifelinesupport.org (last visited Jan. 30, 2012) (searchable database listing Lifeline services available by each ETC in a state).

⁸⁷³ See, e.g., AT&T Reply Comments 2 at 12 n.43; MA DTC Comments at 11; New America Foundation Reply Comments 2 at 3-5; NY PSC Comments at 6; Regulatory Commission of Alaska Reply Comments at 10; NATOA Comments at 2-3.

⁸⁷⁴ 2004 *Lifeline and Link Up Order and FNPRM*, 19 FCC Rcd. at 8330, para. 53.

⁸⁷⁵ *Id.*

here, and we encourage ETCs to make expanded service packages available to eligible low-income consumers.

319. We do not have sufficient information in the record before us to evaluate the impact of a rule mandating that ETCs allow Lifeline discounts to be applied to any package containing a voice component, and we seek further comment in the attached *FNPRM* on requiring ETCs to allow consumers to apply their discount to any service offering.

320. Finally, we adopt an additional rule to better protect the interests of Lifeline subscribers who choose to purchase bundled service packages or packages containing optional calling features. Specifically, we agree with commenters that ETCs should explicitly notify Lifeline subscribers that partial payments will first be applied to pay down the allocated price of the Lifeline voice services, and require ETCs to provide clear language to this effect on the bills of those Lifeline subscribers who are receiving bundled service packages from the ETC.⁸⁷⁶ We adopt this rule to protect against Lifeline subscribers losing access to voice service if they can no longer afford to pay for the non-Lifeline components of a bundled package, thereby also reducing potential burdens that ETCs may face if they have to re-enroll disconnected subscribers.

B. Support for Broadband

1. Background

321. The National Broadband Plan recognized that although increasing numbers of Americans have broadband at home, some segments of the population – particularly low-income households, racial and ethnic minorities, seniors, rural residents, residents of Tribal lands and people with disabilities – disproportionately do not.⁸⁷⁷ The National Broadband Plan recommended using Lifeline to help close the broadband adoption gap and specifically recommended that the Commission implement a low-income pilot program to produce actionable information about how best to design efficient and effective long-term broadband support mechanisms for low-income consumers.⁸⁷⁸ The *Lifeline and Link Up NPRM* likewise recognized the importance to low-income consumers and society as a whole of reducing the gap in broadband adoption, and that the program may be able to play an important role in helping to close the

⁸⁷⁶ See Consumer Groups Comments at 44. This rule will ensure that Lifeline subscribers do not lose access to voice service if they can no longer afford to pay for the non-Lifeline components of a bundled package. Otherwise applicable disconnection rules (state and/or federal) will apply. The rule we adopt today will not unreasonably burden ETCs, including small carriers, some of whom may already have processes in place to apply partial payments to maintain the voice portion of a Lifeline calling plan. Moreover, this rule will help to prevent Lifeline subscribers from being disconnected from voice service for non-payment, thereby reducing potential burdens that may result to ETCs from having to re-enroll disconnected subscribers.

⁸⁷⁷ NATIONAL BROADBAND PLAN at 167 (providing data about how some communities are significantly less likely to have broadband at home); see also *id.* at 152, Box 8-4 (noting that available data suggests that less than 10 percent of residents on Tribal lands have broadband available).

⁸⁷⁸ *Id.* at 172-173. In 2010, the Commission hosted a roundtable discussion to solicit input on how to design a pilot program to test the effectiveness of supporting broadband services directed to low-income households. See *Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers*, WC Dkt. No. 03-109, Public Notice, 25 FCC Rcd 7272 (2010) (2010 Roundtable Public Notice). Webcast of the event is available at <http://www.fcc.gov/events/roundtable-discussion-explore-broadband-pilot-programs>. At the roundtable discussion participants explored goals for supporting broadband through the low-income program; barriers to adoption, including the cost of service; the availability of data and information on broadband service and adoption by low-income individuals; and pilot program mechanics and operation. *Id.* Webcast of the event is available at <http://www.fcc.gov/events/roundtable-discussion-explore-broadband-pilot-programs>.

broadband adoption gap.⁸⁷⁹ The Commission sought comment on whether to amend the definition of Lifeline to cover broadband services, and proposed to set aside a discrete amount of funds reclaimed from eliminating inefficiencies in the program to create a low-income broadband pilot program to gather data about how Lifeline can be used to support broadband adoption.⁸⁸⁰

322. Based on the record, we are taking the first step in working towards achieving one of the three express goals of the program --- recognizing the importance of the availability of broadband services for low-income Americans by creating a low-income broadband pilot program.⁸⁸¹ Recognizing the complexities of modernizing the low-income support mechanisms for broadband, and the need to ensure that universal service funds are used efficiently, we are launching a pilot program to test the design of any future universal service programs involving support for broadband adoption.

2. Creation of a Pilot Program

323. There is broad agreement that a pilot program could allow the Commission to gather data on whether and how the Lifeline program can be structured to promote the adoption and retention of broadband services by low-income households.⁸⁸² We therefore adopt a Low-Income Broadband Pilot Program (Pilot Program) that will focus on testing the necessary amount of subsidies for broadband and the length of support. Given our implementation of the Pilot Program, we decline to amend the definition of Lifeline at this time to include broadband for the existing low-income program. Rather, we conclude it is preferable to develop data that will allow the Commission and participating ETCs to evaluate how best to structure the program in the future, with the added benefit of helping to close the adoption gap for consumers that participate in the pilot.⁸⁸³ We direct the Bureau to initiate the Pilot Program by the release of a Public Notice specifying the Pilot Program application procedures, including dates, deadlines, and other details of the application process, no later than 15 days after receiving approval under the Paperwork Reduction Act.

324. As discussed more fully above, the Fund has realized substantial savings from the June 2011 *Duplicative Program Payments Order*,⁸⁸⁴ and we anticipate that the other efforts to reduce waste in the low-income program will lead to additional significant savings. Consistent with our overarching objective of fiscal responsibility in using universal service funds, we are able to start a pilot program using low-income program funds without increasing the current size of the low-income program. We delegate authority to the Bureau to implement the Pilot Program consistent with the framework established in this Order, and direct USAC to disburse no more than \$25 million to fund the Pilot

⁸⁷⁹ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2852-53, para 267. Many commenters echoed the Commission's concern about the gap in broadband adoption. See, e.g., The City of New York Comments at 1; AT&T Comments at 19-20; Gila River Telecommunications, Inc. PN Comments at 1-9.

⁸⁸⁰ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2855-56, paras. 275-276 and 26 FCC Rcd at 2856-62, paras. 279-302.

⁸⁸¹ See *supra* section III.B (setting forth goals of Lifeline program, which includes availability of broadband service to low-income consumers).

⁸⁸² We note that some commenters urged us to expand the Lifeline program immediately to cover broadband services. See, e.g., Consumer Groups PN Comments at 6; NASUCA PN Comments at 3-4; MAG-Net Comments at 21-22. Further, the record indicates that the Commission would be better served by gathering data on how best to modify the Lifeline program to support broadband. See Joint Center for Political And Economic Studies *Ex Parte* (Nov. 18, 2011) (providing recommendations of how best to structure a pilot program).

⁸⁸³ See *infra* para. 334 (explaining why funding is limited to ETCs pursuant to section 254(e)).

⁸⁸⁴ See generally 2011 *Duplicative Program Payments Order*; see also USAC 2011 *IDV Process Letter* at 1 (noting that USAC has discovered approximately 269,000 duplicates in 12 states).

Program, as directed by the Bureau.⁸⁸⁵

325. As discussed in more detail below, we direct the Bureau to solicit applications from ETCs to participate in the Pilot Program and to select a relatively small number of projects to test the impact on broadband adoption with variations in the monthly discount for broadband services, including variations on the discount amount, the duration of the discount (phased down over time or constant) over a 12-month period.⁸⁸⁶ As discussed more fully below, we will implement an 18-month Pilot Program, which includes 3 months for ETCs to implement necessary back-office functions, up to 12 months of subsidized broadband service either through bundles of voice and broadband or standalone broadband, and 3 months to finalize data collection and analysis.

326. The Bureau shall select a diversity of projects, with different amounts and duration of subsidies, different types of geographic areas (e.g., rural, urban) and different types of broadband networks (e.g., fixed and mobile) and technologies.⁸⁸⁷ To the extent possible, the pilot program will seek to collect data on a number of variables, such as the impact of income, age, ethnicity, gender, and family size and make up on adoption rates. The Bureau will give preference in choosing projects that offer speeds at least at 4 Mbps for downloads and 1 Mbps for uploads. The Bureau will also give preference to ETCs that partner with third parties (e.g., grantees of other programs such as the Broadband Technology Opportunities Program (BTOP), the Broadband Initiatives Program (BIP), existing library programs) that have already developed holistic approaches to overcoming broadband adoption barriers, including digital literacy, equipment costs, and relevance. The Bureau will consider whether the projects proposed will promote entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, consistent with section 257 of the Communications Act, including those that may be socially and economically disadvantaged businesses. We recognize, however, that it is difficult to partner with third party entities in more rural areas, and will not exclude from consideration applications that include remote online training.⁸⁸⁸ We also encourage ETCs to utilize control groups when developing proposals in order to better assess the impact on adoption of the project. Project funding, which will be disbursed directly to ETCs participating in the program, will be passed on to subscribers in the form of subsidies to defray the cost of service. ETCs selected to participate in the Pilot Program will be required to participate in the collection, analysis, and sharing of anonymized quantitative and qualitative data with standardized data elements, formatting, and submission requirements. At the end of the Pilot Program, the Commission will publicly recognize the ETCs and their partners that best succeeded in meeting the Pilot Program goals.

327. The Commission will draw on the experiences of other broadband adoption programs such as BTOP/BIP and “Connect to Compete” without duplicating their efforts and results, and plans to implement best practices (e.g., type of data collected and tools used, evaluation metrics/criteria, use of

⁸⁸⁵ The \$25 million for the pilot is exclusive of administrative expenses.

⁸⁸⁶ We find that the Pilot Program, and the data collection involved, is exempt from the requirements to create an Institutional Review Board (IRB). See 45 C.F.R. 46.101(b); see also Letter from Sarah Morris, New America Foundation, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Jan. 23, 2012) (citing 45 C.F.R. § 46) (raising the question of whether the data collection component within the Pilot Program would require creation of an IRB).

⁸⁸⁷ See, e.g., AT&T PN Comments at 15 (recommending that the pilot test a variety of approaches to determine which approach most efficiently increases broadband adoption by low-income consumers).

⁸⁸⁸ See Letter from Jennie B. Chandra, Senior Counsel, Windstream, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. *et al.* at 9-10 (filed Dec. 21, 2011) (Windstream Dec. 21 *ex parte* Letter) (urging the Commission to take into account the particular challenges presented by rural areas including the difficulty of partnering with third party entities with existing adoption programs).

control groups) that were learned through implementation of such programs.⁸⁸⁹ While the Commission plans to take best practices learned through other broadband adoption programs to help in creating metrics/criteria for selecting and evaluating pilots and data collection, the Pilot Program is unique in that it is a subsidy-focused program intended to study the length and amount of subsidy that is necessary for low-income consumers to adopt broadband.⁸⁹⁰ Additionally, as discussed in more detail below, the Pilot Program is unique in that it will require participation by broadband providers that are also ETCs, which means low-income consumers that qualify for Lifeline will also qualify for the subsidized broadband service through this Pilot.⁸⁹¹

3. Legal Authority

328. In the *USF/ICC Transformation Order and FNPRM*, the Commission concluded that we have authority under section 254 and section 706 of the Act to provide support for modern networks capable of providing both voice and broadband and to condition receipt of support for the provision of voice telephony on the offering of broadband services over those networks.⁸⁹² Consistent with that decision, we conclude that sections 254 and 706 authorize us to fund bundled voice and broadband services as well as standalone broadband services as part of a discrete, time-limited Pilot Program structured to determine how best to bring advanced services to low-income consumers. These conclusions are consistent with the overwhelming bulk of the comments we received on this issue.⁸⁹³

⁸⁸⁹ Letter from Sarah Morris, New America Foundation, to Marlene Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 2 (filed Dec. 12, 2011) (New America Foundation Dec. 12 *ex parte* Letter) (providing examples of data tools that BTOP grantees developed that could be implemented for the purposes of the Pilot Program study such as the definition of what is meant by adoption). Based on their work on BTOP evaluations, the New America Foundation recommends that the Commission use evaluation tools and metrics that measure broadband adoption in broad terms, including customers' access to community resources. *See id.* Commenters have also recommended that the Commission utilize existing data from other adoption programs to help in selecting pilot communities, program evaluation and control groups. *See id.* (recommending that the Commission utilize data from other adoption programs); *see also* Letter from Nicol Turner-Lee, The Joint Center for Political And Economic Studies to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 at 1-3 (filed Nov. 18, 2011).

⁸⁹⁰ New America Foundation Dec. 12 *ex parte* Letter (recognizing how the Pilot Program differs from BTOP/BIP, but Commission can implement practices learned through other grant programs).

⁸⁹¹ Other broadband adoption programs are distinguishable from the Pilot Program. For example, the BTOP program focuses on digital literacy training centers with some grantees entering partnerships with broadband providers to offer discounted broadband service after completing digital literacy training programs. *See* Broadband Technology Opportunities Program (BTOP) Quarterly Program Status Report Submitted to the Committee on Appropriations United States Senate and House of Representatives, the Committee on Commerce, Science and Transportation United States Senate and the Committee on Energy and Commerce United States House of Representatives, December 2011, *available at* <http://www.ntia.doc.gov/files/ntia/publications/btop-quarterly-congressional-report-dec-2011.pdf>. In the "Connect to Compete" initiative, cable broadband providers will provide discounted broadband service at minimum speed tier of 1 Mbps to eligible families when at least one student is enrolled in the Free School Lunch Program, the family has not subscribed to broadband service for the past 90 days and does not have an overdue bill or unreturned equipment owed to the participating cable company. *See* FCC & "Connect to Compete" Tackle Barriers to Broadband Adoption, *available at* <http://www.fcc.gov/document/fcc-and-connect-compete-broadband-fact-sheet> (providing details of the discounted broadband service and which consumers are eligible).

⁸⁹² *See USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 60-73.

⁸⁹³ *See, e.g.*, MMTC PN Comments at 1-2 (recognizing Commission authority to create broadband pilot project); GRTI PN Comments at 4-5 (citing sections 254(b)(2) and (b)(3) of the Communications Act and sections 151 and (continued....))

329. In enacting section 254, as part of the Telecommunications Act of 1996, Congress expressly recognized the importance of ensuring that low-income consumers “have access to telecommunications and information services, including . . . advanced telecommunications and information services.” Section 254 sets forth additional principles upon which we must “base policies for the preservation and advancement of universal service.”⁸⁹⁴ Among these principles are that “[q]uality services should be available at just, reasonable, and affordable rates,” and that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.” Recently, in the *USF/ICC Transformation Order and FNPRM*, consistent with the recommendations of the Joint Board, we adopted an additional principle that “[u]niversal service support shall be directed where possible to networks that provide advanced services as well as voice services.”⁸⁹⁵

330. As we explained in the *USF/ICC Transformation Order and FNPRM*, section 254 provides express statutory authority to support telecommunications services that we have designated as eligible for universal service support.⁸⁹⁶ To the extent carriers offer traditional voice telephony services over traditional circuit-switched networks, our authority to provide support for such services is well-established. Section 254 also allows us to impose conditions on the support provided to entities designated as ETCs. Indeed, we have a “mandatory duty” to adopt universal service policies that advance the principles outlined in section 254(b), and we have the authority to “create some inducement” to ensure that those principles are achieved.⁸⁹⁷ Congress made clear in section 254 that the deployment of, and access to, information services – including “advanced” information services – are important components of a robust and successful federal universal service program.⁸⁹⁸ Also, the statute is clear that universal service support should include addressing low-income needs.⁸⁹⁹ Using a discrete, time-limited broadband pilot program to determine whether the low-income program can successfully be used to increase broadband adoption among low-income consumers is therefore consistent with the purposes of section 254. Accordingly, we find authority under section 254, as supported by section 4(i),⁹⁰⁰ to provide limited USF support through a Low-Income Broadband Pilot Program and to require ETCs receiving support through the Pilot Program to offer either a bundle of voice and broadband services or standalone broadband service.

331. We also have authority under section 706 of the 1996 Act to provide USF support to ETCs through a low-income broadband Pilot Program to subsidize low-income consumers’ purchase of broadband services. In section 706, Congress recognized the importance of ubiquitous broadband deployment to Americans’ civic, cultural, and economic lives and, thus, established a federal policy of “encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications

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154(i) as legal authority for the Commission to fund broadband pilot program); Cox PN Comments at 5-6 (arguing that the Commission has broad legal authority to fund broadband pilot program under sections 254(c) and 706).

⁸⁹⁴ 47 U.S.C. § 254(b).

⁸⁹⁵ See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 65.

⁸⁹⁶ 47 U.S.C. § 254(c); See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 62.

⁸⁹⁷ *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200, 1204 (10th Cir. 2001).

⁸⁹⁸ 47 U.S.C. § 254(b)(2), (b)(3).

⁸⁹⁹ See 47 U.S.C. §§ 254(b)(1), (b)(3) (implementing Congress’s universal service directives in sections 254(b)(1) and 254(b)(3) that quality services should be available at affordable rates and to consumers throughout the nation).

⁹⁰⁰ 47 U.S.C. § 4(i) (providing Commission authority to “perform any and all acts . . . as not inconsistent with [the Communications Act] as may be necessary in the execution of its functions”).

capability to all Americans.”⁹⁰¹ Of particular importance, Congress adopted a definition of “advanced telecommunications capability” that is not confined to a particular technology or regulatory classification. Rather, “‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.”⁹⁰² Section 706(a) directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁹⁰³ Section 706(b) requires the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and, if the Commission concludes that it is not, to “take *immediate action* to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”⁹⁰⁴ The Commission has found that broadband deployment to all Americans has not been reasonable and timely⁹⁰⁵ and observed in its most recent broadband progress report that “too many Americans remain unable to fully participate in our economy and society because they lack broadband.”⁹⁰⁶ This finding triggers our duty under section 706(b) to “remov[e] barriers to infrastructure investment” and “promot[e] competition in the telecommunications market” in order to accelerate broadband deployment throughout the Nation.

332. Providing support to carriers to subsidize low-income consumers’ purchase of broadband services helps achieve section 706’s objectives. The Commission has recognized that a key barrier to infrastructure investment is “lack of affordability of broadband Internet access services.”⁹⁰⁷ Providing federal support for low-income consumers’ purchase of broadband services will expand the base of consumers able to purchase broadband services. The additional revenue generated by these new consumers in areas where broadband is already available will provide additional resources for deployment projects where broadband networks are not yet available. Effective support for broadband services to low-income consumers thus “removes barriers to infrastructure investment” as section 706(b) directs us to

⁹⁰¹ 47 U.S.C. § 1302(a); Section 706(a) is more than just a statement of policy, as Commissioner McDowell contends. It directs the Commission to “utiliz[e], in a manner consistent with the public interest, convenience, and necessity, ... regulating methods that remove barriers to infrastructure investment.” *Id.* As discussed in para. 332, *infra*, providing federal support for low-income consumers’ purchase of broadband services does remove barriers to infrastructure investment.

⁹⁰² 47 U.S.C. § 1302(d)(1); see also *National Broadband Plan for our Future*, GN Dkt. 09-51, Notice of Inquiry, 24 FCC Rcd 4342, 4309, App., para. 13 (2009) (“advanced telecommunications capability” includes broadband Internet access); *Inquiry Concerning the Deployment of Advanced Telecomms. Capability to All Americans in a Reasonable and Timely Fashion*, CC Dkt. No. 98-146, Report, 14 FCC Rcd 2398, 2400, para. 1 (section 706 addresses “the deployment of broadband capability”), 2406, para. 20 (same). The Commission has observed that the phrase “advanced telecommunications capability” in section 706 is similar to the term “advanced telecommunications and information services” in section 254. See *Rural Health Care Support Mechanism*, WC Dkt. No. 02-60, Order, 21 FCC Rcd 11111, 11113, n.9 (2006).

⁹⁰³ 47 U.S.C. § 1302(a).

⁹⁰⁴ 47 U.S.C. § 1302(b) (emphasis added).

⁹⁰⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Dkt. No. 09-147 *et al.*, Report, 25 FCC Rcd 9556, 9558, paras. 2-3 (2010) (*Sixth Broadband Progress Report*); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Seventh Broadband Progress Report and Order on Reconsideration, GN Dkt. 10-59, 26 FCC Rcd 8008, 8009, para. 1 (2011) (*Seventh Broadband Progress Report*)

⁹⁰⁶ *Seventh Broadband Progress Report*, 26 FCC Rcd at 8011, para. 4.

⁹⁰⁷ *Id.*, at 8040, para. 65.

do, and the pilot program we establish here is an important first step to designing such support.⁹⁰⁸

4. Structure of the Pilot Program

333. The Pilot Program is to be a joint effort of the Commission, ETCs, broadband providers, and other interested parties, including non-profit institutions, independent researchers with experience in program design and evaluation, consumer device manufacturers, and state, local and Tribal government agencies. Over the last several years, there has been a groundswell of initiatives focused on broadband adoption.⁹⁰⁹ Our aim is not to retread the ground already covered by public and private broadband adoption projects but to benefit from the work already done on broadband adoption in order to determine how we can best use Lifeline funds to increase broadband adoption and retention by low-income consumers. Consistent with this aim and our legal authority, we direct the Bureau to incorporate the following general guidelines in implementing the Pilot Program.

a. Service Provider Qualifications

334. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether funding for the Pilot Program should be limited to ETCs, or whether non-ETCs could be eligible for funding.⁹¹⁰ Section 254(e) of the Communications Act provides that only ETCs designated pursuant to section 214(e) are eligible for universal service support.⁹¹¹ Given that the Fund will be used for the Pilot Program, only ETCs will be eligible to receive Pilot Program funds. Carriers that seek to participate in the Pilot Program must be ETCs in the areas for which they propose to offer service at the time they submit their proposed projects to the Commission for review. If a carrier is contemplating becoming an ETC to participate in the Lifeline program, including participation in the Pilot Program, it should act promptly to

⁹⁰⁸ 47 U.S.C. § 1302(b).

⁹⁰⁹ Federal, state, and local entities, along with their non-governmental partners, have provided significant funding to support hundreds of innovative broadband adoption programs. Most recently, we have announced several broadband adoption initiatives. For example, *Connect to Compete* is aimed at boosting basic computer skills and promoting the adoption of high-speed Internet. See <http://connect2compete.org> (last visited Feb. 5, 2012); see also Press Release, Federal Communications Commission, FCC “Connect to Compete” Tackle Barriers to Broadband Adoption (Nov. 9, 2011), available at <http://www.fcc.gov/document/fcc-and-connect-competite-broadband-fact-sheet> (detailing private/non-profit partnership providing qualifying families with \$9.95 monthly broadband service and reduced price equipment). The Connect to Compete program is intended to complement the Broadband Telecommunications Opportunities Program (BTOP) and the Broadband Initiatives Program (BIP) which together have committed more than \$7 billion to fund numerous exciting broadband initiatives, many of which have already increased adoption in the communities in which they are working and provided other tangible results for the program participants. Also recently, Comcast and CenturyLink have announced low-cost broadband adoption programs. The Comcast Internet Essentials program is aimed at families that have one or more children who qualify for free school lunches, and is advertised as providing \$9.95/month broadband services, at speeds of up to 1.5 Mbps down and 384 Kbps up, and the opportunity to purchase a \$150 netbook computer. The CenturyLink program is aimed at consumers who would qualify for Lifeline service, and is advertised as providing \$9.95/month broadband services for the first 12 months at speeds of up to 1.5Mbps down and the opportunity to purchase a \$150 netbook computer.

⁹¹⁰ *Lifeline and Link Up NPRM*, 26 FCC Rcd. 2860, para. 293.

⁹¹¹ 47 U.S.C. § 254(e). Some commenters argued that only ETCs can and should receive USF funds. See, e.g., GCI PN Comments at 2; Staff of the Public Utilities Commission of Ohio Comments at 30-31 (citing 214(e)(1)(A) as limiting funding to ETCs); Sprint PN Comments at 5 (supporting participation only to designated ETCs to ensure adequate oversight and eliminate issues associated with inexperience in serving Lifeline subscribers). Other commenters felt that the Commission should not limit funding for the Pilot Program to ETCs. See, e.g., Box Top Comments at 4; EDNet Reply Comments at 2; LCCHR Comments at 4; NCTA Comments at 4-5; USTelecom Comments at 23; MSB Reply Comments at 5; AT&T Comments at 8-9 (claiming Commission has authority to distribute funds to non-ETCs under 254(j)).

begin the process. The Commission will make every effort to process such ETC applications in a timely fashion, and we urge the states to do likewise. We anticipate the Bureau will give ETCs at least 45 days after release of the Public Notice to submit applications for the Pilot Project.

335. To afford Tribes an increased opportunity to participate in the Pilot Program, in recognition of their interest in self-government and self-provisioning on their own lands, we will permit a Tribally-owned or controlled entity to submit a Pilot Program proposal for the geographic area defined by the boundaries of the Tribal land associated with the Tribe that owns or controls the entity as long as the Tribally-owned or controlled entity has an application for ETC designation pending at the time it submits its proposal.⁹¹² We note that allowing such entities to submit applications for the Pilot Program in no way prejudices the ultimate decision on a Tribally-owned or controlled entity's ETC designation or whether it will be chosen as a project for the Pilot Program. Support would be disbursed only after the carrier receives its ETC designation.⁹¹³

b. Data Gathering and Sharing

336. Numerous commenters noted the importance of using the Pilot Program to collect and share robust data.⁹¹⁴ Therefore, to be eligible for funding, ETCs seeking to participate in pilot projects must commit to robust data gathering as well as analysis and sharing of the data. Applicants will be expected to explain what types of data they intend to gather and how they intend to gather that data. There will be standardized data elements, formatting and submission requirements for all of the participating ETCs outlined in the Public Notice that will detail the application procedures. Service providers need not commit to conducting all data gathering and analysis functions "in house," however. As discussed in section IX.B.3.f below, we authorize administrative expenses from the Fund to perform data gathering and analysis functions. Funded projects must seek participating subscribers' consent to share information about their experiences with the Commission, public utility commissions in states that host pilot projects, Tribal governments hosting pilot projects and other stakeholders, and must provide such subscriber information in anonymized form. The Commission plans to make this data public for the benefit of all interested parties, including third parties that may use such information for their own studies and observations.

c. Duration of Pilot Program

337. In order to garner useful data without delay, we direct the Bureau to fund the pilot projects for up to 18 months from the time the Bureau announces the selection of the pilot projects, and expect the projects to be substantially completed at the end of that time, with interim reporting as discussed in IX.B.3.b.⁹¹⁵ We expect each project to offer 12 months of reduced-price voice and broadband services or standalone broadband to the consumers served in the pilot, unless the pilot is specifically designed to test a shorter duration, and that design element is clear in the proposal made to

⁹¹² See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 491 (affording Tribes a similar opportunity in the Mobility Fund auction).

⁹¹³ A Tribally-owned or controlled entity that does not obtain and provide the required ETC designation will not be entitled to any support payments and may ultimately be in default in accordance with the rules. See 47 C.F.R. § 54.1005(b)(3)(v); 47 C.F.R. § 1.21004.

⁹¹⁴ See, e.g., EDNet Comments at 10-12 (emphasizing importance of requiring carriers to collect data); Benton/NAF PN Comments at 9-11 (proposing an open process that ultimately makes available anonymized raw data).

⁹¹⁵ Although the Pilot Program will officially end after 18 months, we encourage ETCs to set up their projects so that they can follow the low-income subscribers beyond the end of the funding for the project, and we direct the Wireline Competition Bureau when deciding which projects to fund to give preference to well designed projects that commit to collecting and sharing longer term data about the subscribers that participated in the projects.

the Commission. We recognize, however, that some projects may require additional time to implement, as well as several months to finalize the collection and analysis of the data the projects generate. We therefore authorize the Bureau to grant up to six additional months for projects to startup and wind down provided that no project may offer more than 12 months of reduced-price services.

338. At the Commission's broadband pilot roundtable, several parties suggested that it might be appropriate to provide subsidies only for a limited period of time to address the initial adoption hurdle of realizing the benefits of broadband.⁹¹⁶ Proposals to provide reduced voice and broadband services for less than 12 months should include a commitment to track and report data on adoption and retention for a minimum of 12 months so that the Commission can evaluate whether consumers drop service when the subsidy is eliminated or reduced.

d. Services to Be Supported

339. In order to encourage consumer participation in this Pilot Project, all projects must support services meeting the criteria set forth in this section.

340. *Bundled and Standalone Services.* As discussed in section IX.B.3, we conclude that sections 254 and 706 authorize us to fund bundled voice and broadband services as well as standalone broadband services as part of a discrete, time-limited Pilot Program structured to determine how best to bring the low-income program into the digital age.⁹¹⁷ We therefore direct the Bureau to select Pilot Program applicants that agree to offer voice services bundled with broadband or standalone broadband service. We expect that pilot participants will seek a monthly Lifeline subsidy equal to whatever subsidy the ETC would be entitled to for a voice-only subscriber, plus whatever additional amount that the ETC proposes to offer consumers as part of the pilot program. In its application, the ETC will propose how much support it should receive for each broadband service subscriber.

341. *Broadband Speed.* Consumers should have access to broadband that is capable of enabling the kinds of key applications that drive our efforts to achieve universal broadband, including education (e.g., distance/online learning),⁹¹⁸ healthcare (e.g., remote health monitoring),⁹¹⁹ and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas).⁹²⁰ In the *USF/ICC Transformation Order and FNPRM*, we established 4 Mbps downstream and 1 Mbps upstream as a broadband speed benchmark at fixed locations for CAF recipients.⁹²¹ We further established speeds for recipients of Mobility Fund Phase I support deploying current generation, also known as third generation or 3G, or next generation, also known as fourth generation or 4G, mobile networks.⁹²² In

⁹¹⁶ See June 2010 Roundtable Public Notice.

⁹¹⁷ See, e.g., Consumer Groups PN Comments at 5; Budget/Great Call/UCC PN comments at 1-2; CA PUC PN Comments at 6-7; Cox PN Comments at 8-12; GCI PN Comments at 2; MMTC PN Comments at 3; NASUCA/NJ PN Comments at 6; SBI PN Comments at 10.

⁹¹⁸ See NATIONAL BROADBAND PLAN at 223-44.

⁹¹⁹ See, e.g., Omnibus Broadband Initiative, *Health Care Broadband in America, Early Analysis and a Path Forward*, at 5 (Aug. 2010); Center for Technology and Aging, *Technologies for Remote Patient Monitoring for Older Adults*, Position Paper, at 13 (Apr. 2010), available at <http://www.techandaging.org/RPMPositionPaper.pdf> (discussing data transmission methods used for various continuous cardiac remote patient monitoring technologies).

⁹²⁰ See NATIONAL BROADBAND PLAN at 223-244.

⁹²¹ See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 92-5; see NATIONAL BROADBAND PLAN at 135-36 (recommending the Commission to establish minimum broadband speed goal of 4 Mbps for downloads and 1 Mbps for uploads).

⁹²² See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 359-364.

particular, the minimum standard for 3G networks requires supported mobile service providers to offer mobile transmissions to and from the network meeting or exceeding the following minimum standards: outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices. For 4G networks, we required the following minimum standards: outdoor minimum of 768 kbps downstream and 200 kbps upstream to handheld mobile devices. These minimum data rates should be achievable in both fixed and mobile conditions, at vehicle speeds consistent with typical speeds on the roads covered and must be achieved throughout the cell area, including at the cell edge. We adopt these benchmarks for purposes of the Pilot Program as well, meeting the CAF benchmarks for fixed service, 3G benchmarks on 3G networks, and 4G benchmarks on 4G networks.⁹²³ However, we recognize there are many areas of the country where low-income consumers do not yet have access to networks that can provide such speeds, either for fixed or mobile services.⁹²⁴ We also recognize that there is typically a trade-off between the performance of broadband service and its cost to consumers, and note that some commenters support enabling low-income consumers to use a Lifeline subsidy for slower broadband speeds.⁹²⁵ An offering that includes a broadband service below the speed benchmarks to the extent that it is less expensive, potentially could draw more Lifeline-eligible consumers.⁹²⁶ In light of the challenges of offering higher speeds in some areas and on some networks, and the benefits of more fully understanding consumer choices in the Pilot Program, we provide the Bureau discretion to select some projects that offer broadband at speeds below the benchmark, but only upon careful consideration of the justification for providing lower speeds. Such a justification should at a minimum show that the project would contribute data that would be comparably useful in our efforts to understand how Lifeline can best help overcome barriers to broadband adoption.

342. *Latency and Capacity.* The *USF/ICC Transformation Order* and *FNPRM* required ETCs to offer sufficiently low latency to enable use of real-time applications, such as VoIP, and concluded that any usage limitations imposed by an ETC on its USF-supported broadband offerings must be reasonably comparable to usage limits for comparable broadband offerings in urban areas.⁹²⁷ We expect Pilot Project participants to offer services with similar characteristics to low-income consumers. In particular, we require participants to offer usage limits that are reasonably comparable to usage limits for comparable broadband offerings in urban areas. We direct the Bureau to require applicants that propose to limit data usage on their offerings to specify the size of usage limits, and explain how subscribers will be notified when they reach their limits and the consequences to a subscriber of exceeding such usage limits.

e. Consumer Qualifications

343. *Consumer Eligibility To Participate in Pilot Projects.* The *Lifeline and Link Up NPRM* and *Public Notice* both sought comments on whether to allow broadband pilot projects to deviate from the federal default rules with regard to consumer eligibility for the Lifeline/Link Up programs.⁹²⁸ We

⁹²³ As noted in the *USF/ICC Transformation Order* and *FNPRM*, examples of 3G networks are EV-DO, EV-DO Rev A, UMTS/HSPA, while examples of 4G networks are HSPA+ or LTE. *Id.* at para. 334.

⁹²⁴ See *id.* at paras. 93-95; *Sixth Broadband Progress Report*, 25 FCC Rcd 8011-12, para. 5; *Seventh Broadband Progress Report*, 26 FCC Rcd 8008, 8019, para. 15; see also Budget PN Comments at 2-3 (explaining that speeds of 4 Mbps/1Mbps are unrealistic in some Tribal lands, areas of mountainous terrain, and Puerto Rico); GCI PN Comments at 4-5 (noting that 4 Mbps/1Mbps speeds are not affordable in many areas, including Alaska).

⁹²⁵ See, e.g., GCI PN Comments at 5.

⁹²⁶ Participants in "Connect to Compete" will offer consumers a minimum of download speeds up to 1 Mbps, while some may receive faster speeds.

⁹²⁷ See *USF/ICC Transformation Order* and *FNPRM*, FCC 11-161 at paras. 96-100 (fixed); 363-64 (mobile).

⁹²⁸ *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2832-33, para. 202; *Lifeline and Link Up Public Notice*, 26 FCC Rcd 11099-11100, para. 1. A significant number of commenters urged the Commission to set the income-eligibility (continued....)

recognize that the need to increase broadband adoption does not start and stop with consumers who are eligible for the Lifeline program. However, by definition, Lifeline must focus its resources on qualifying low-income consumers. Moreover, consistent and uniform eligibility rules applicable to both the Pilot Program and the program will control administrative costs associated with the pilots and help the Commission to more easily compare results from different pilot projects.⁹²⁹ Therefore, we require that all pilot projects use the federal criteria for low-income consumer eligibility as modified in this Order.

344. *New Adopters.* One important variable to test during the Pilot Program is the extent to which discounts on the cost of broadband services may induce broadband adoption among those who do not currently subscribe to broadband. For that reason, we direct the Bureau to ensure that all of the projects selected provide services that focus on qualifying households that do not currently subscribe to broadband services.⁹³⁰ We do this to focus on the goal of increasing broadband adoption by low-income consumers. We conclude that using the Pilot Program to subsidize broadband services purchased by consumers who have already adopted such services will not provide us with sufficient and useful data about whether such subsidies increase adoption.

f. Use of Pilot Program Funds

345. Consistent with the Lifeline program, we expect that the primary use of Pilot Project funds will be to provide discounts to qualifying consumers for recurring and non-recurring fees. Additionally, we authorize a portion of funds to be used to execute necessary program administrative functions.

346. *Recurring/Nonrecurring Fees for Broadband.* To test various subsidy levels, we will not require that ETCs impose minimum or maximum monthly fees for each project. However, to ensure there is a commitment by consumers to utilize the service, we direct the Bureau to give preference to those projects that impose at least a minimal charge, either one-time or on an ongoing basis, for the low-income consumer to participate in the project.⁹³¹ We acknowledge that many ETCs charge a non-recurring activation fee for broadband services and will consider proposals that include reimbursement for such fees.⁹³² As with the current program, the full amount of the subsidies must be passed on to the participating subscribers.

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threshold for consumers participating in the Pilot Program at 150 percent of FPG. *See, e.g.,* Benton/PK/UCC Comments at 10; Consumer Groups PN Comments at 4, 6; CA PUC PN Comments at 4; GRTI PN Comments at 9-10; MMTC PN Comments at 2; NASUCA/NJ PN Comments at 5-6; SBI PN Comments at 10; Joint Center, PN Reply Comments at 4. Still other commenters argued that the Commission should apply the existing voice eligibility criteria of 135 percent of FPG to broadband. *See, e.g.,* Cox PN Comments at 9.

⁹²⁹ Letter from Steven F. Morris, National Cable & Telecommunications Association, GN Dkt. No. 09-51 *et al.*, (filed Dec. 4, 2009).

⁹³⁰ We recognize that some participants might currently subscribe to a 3G wireless service but do not subscribe to fixed residential broadband, which would not preclude them from participating in the Pilot Program; *see supra* section VI.B (codifying a one-per-household requirement).

⁹³¹ The subsidy amount within each project will apply to the lowest publicly available promotional rate that the ETC offers for broadband, with the same speeds, to consumers in the same geographic market at the time the ETCs submit their applications for the Pilot Project.

⁹³² *See, e.g.,* Windstream Internet service, available at <http://www.windstream.com/Free> (last visited on Jan. 3, 2011); Centurylink Internet service, available at <http://embarq.centurylink.com/embarq/assets/disclaimers/resDisclaimers.html> (last visited on Jan. 3, 2011). Any reimbursements for non-recurring fees in the Pilot Program are separate and apart from the Link Up program that the Commission is eliminating as described in section VII.C.

347. *Administrative Costs.* To allow for uniform collection of data from consumer and carrier surveys and other related program administrative costs, the Fund may be used to administer such functions as are necessary, including costs associated with conducting surveys of pilot participants and analyzing data.

348. *Equipment.* As the Commission recognized in the *Lifeline and Link Up NPRM*, the expense of consumer equipment necessary to access the Internet (including computers or other devices) has been shown to be a major barrier to broadband adoption, particularly for low-income households.⁹³³ At the same time, as the Commission acknowledged in the *Lifeline and Link Up NPRM*, historically the Fund has been used for services not equipment.⁹³⁴ The Commission therefore sought comment on how the Pilot Program could test the impact of a variety of equipment discount programs in encouraging broadband adoption.⁹³⁵

349. There is evidence in the record that lack of access to affordable equipment, including computers, smart phones, air cards, and modems is a significant barrier to broadband adoption among low-income consumers,⁹³⁶ and we therefore conclude that projects should incorporate this consideration into their plans. We encourage Pilot Program applicants – directly or in partnership with other entities – to provide no-cost or low-cost devices to participants in their pilot project, and direct the Bureau to consider the extent to which pilot projects provide access to equipment when deciding which projects to fund.⁹³⁷ However, in keeping with the Commission's historic approach to using the Fund, we will not subsidize equipment purchases as part of the pilot program.⁹³⁸

g. Other Factors To Be Considered

350. *Diversity of Data.* The *Lifeline and Link Up NPRM* sought comment on how best to design the Pilot Program in order to gather as much useful data as possible.⁹³⁹ We recognize that there is a tension between the need to limit the number of variables examined in order to ensure that the data gathered is comparable and useful and the desire to examine as many facets of the issue as possible. Given the potential variety of proposed projects and the goal of finding the best way to use program funds to encourage low-income consumers to adopt and use broadband services, we direct the Bureau to select projects that will maximize the useful information available regarding the impact of variations in the

⁹³³ *Lifeline and Link Up NPRM*, 26 FCC Rcd. at 2853, para. 268.

⁹³⁴ *Id.* at 2857, para. 282.

⁹³⁵ *Id.* at 2857-58, paras. 282-283.

⁹³⁶ Commenters agreed that lack of access to affordable equipment is a major barrier to broadband adoption among low-income consumers, and offered data supporting that proposition. *See, e.g.,* Cox Comments at 4 (providing data demonstrating that one of the most significant barriers to broadband adoption is the lack of necessary equipment). Cox's internal research shows that approximately 70 percent of the low-income consumers in Cox's market do not have computers. *See id.*

⁹³⁷ The Public Notice asked about whether we should seek to test the impact of consumers using leased versus purchased equipment. *Lifeline and Link Up Public Notice*, 26 FCC Rcd at 11099-11100, at para. 1.c. A number of consumer groups expressed concerns the Commission would encourage consumers to lease computers. *See* Consumer Groups PN Comments at 7-8. The groups pointed out that computer leasing has often proved to be financially detrimental to consumers and could lead to abusive equipment lending schemes. *Id.*

⁹³⁸ Compare GRTI PN Reply Comments at 2 (arguing that sections 254(b)(2) and (b)(3) of the Communications Act give the Commission authority to take necessary action to increase "access to services" and subsidizing equipment costs will increase access to broadband services); with Cox PN Comments at 6-7 (urging the Commission to use its ancillary authority to support computer equipment and training).

⁹³⁹ *Lifeline and Link Up NPRM*, at 2856-65, paras. 279-312.